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January 10, 2011

Ms. Sharon Gillett, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20054

Re: Rural Health Care Pilot Program – WC Docket No. 02-60

Arkansas Telehealth Network (“ATN”)

Comments in Support of Request of Michigan Public Health Institute (“MPHI”) for Waiver of Five Year Invoicing Period

ATN Request for Waiver of Five Year Invoicing Period  
to Allow ATN a Three Year Extension of its Invoicing Period to July 15, 2018

Dear Ms. Gillett:

On behalf of the Arkansas Telehealth Network (ATN), and in response to the Wireline Competition Bureau’s (the “Bureau’s”) Public Notice dated December 9, 2010,<sup>1</sup> this letter is submitted to:

- Support the request of the Michigan Public Health Institute (“MPHI”) for a waiver of Paragraph 94 of the *2007 Pilot Program Selection Order*,<sup>2</sup> which currently requires Pilot Program participants to complete network buildout and submit invoices to USAC for reimbursement within five years from the date of their initial funding commitment letter (the “Invoicing Deadline”).

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<sup>1</sup> Public Notice, DA 10-2334, WC Docket 02-60 (WCB, Rel. December 9, 2010)

<sup>2</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 22 FCC Rcd 20360, 20409-10, 20362, paras. 4, 94 (2007) (*2007 Pilot Program Selection Order*); see also *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 25 FCC Rcd 1423, 1427, para. 8 (2010).

- Request on behalf of ATN a waiver of Paragraph 94 of the *2007 Pilot Program Selection Order* to allow ATN an additional three years from the date of ATN's initial funding commitment letter, i.e., until July 15, 2018, within which to complete network buildout and submit invoices to USAC for reimbursement.

### **Comments in Support of the MPHI Request**

With respect to MPHI's request for extension ("MPHI Request"), ATN notes that MPHI has documented numerous valid reasons why buildout and invoicing is unlikely to be completed within MPHI's five year Invoicing Deadline, including lengthy site eligibility review and changes in participating sites, and coordination of the MPHI Pilot Project with construction of a fiber backbone using ARRA broadband stimulus funds. Such circumstances appear to consist of external factors beyond the control of MPHI, and grant of the requested waiver does not appear to pose an undue burden on USAC or the Commission. Accordingly, ATN supports the MPHI Request for waiver and extension of the Invoicing Deadline.

### **ATN Request for Waiver of Five Year Invoicing Period to Allow Three Year Extension of Invoicing Period for ATN to July 15, 2018**

ATN's Initial funding commitment letter was issued on July 15, 2010, resulting in an Invoicing Deadline for ATN of July 15, 2015. ATN respectfully requests a waiver of its current July 15, 2015 Invoicing Deadline to allow ATN an additional three years, i.e., until July 15, 2018, within which to complete network buildout and submit invoices to USAC for reimbursement. In support of its request, ATN submits that a number of factors prevent ATN from ensuring at this time that it can complete all buildout and invoicing activities by ATN's current Invoicing Deadline:

- ATN's initial funding commitment letter, which started the clock ticking for the five year Invoicing Deadline, authorized funding only for network design activities. While that was a necessary and appropriate first step, substantial work remains to construct the network and complete invoicing. For example, although ATN's initial funding commitment letter was issued on July 15, 2010, ATN was not presented with the draft network design for review until only 19 days ago, on December 22, 2010. ATN now anticipates a period of intensive review and negotiation in order to finalize the project's scope and cost, which effort will be significantly impacted by ongoing issues related to the finalization of the number of participating sites. Only upon finalization of the network design can ATN even commence the RFP process and begin to solicit bids to construct the entire network. With respect to the bidding process, the possibility exists that up to nine separate bids could be selected for implementation of each of the project's nine regional hubs, a scenario which could significantly complicate the RFP process and extend the time for completion of construction/invoicing. Even as portions of the network are constructed, ongoing invoicing for recurring line charges will further extend the ultimate completion of this project.

- In addition, similar to MPHI's situation where most of MPHI's sites will utilize the stimulus-funded backbone in Michigan, once vendor selection is completed in Arkansas, construction of ATN's Pilot Program-funded facilities must be carefully and deliberately coordinated with the three year construction of the state-wide fiber backbone infrastructure to be installed under Arkansas' \$102 million Broadband Technology Opportunities Program (BTOP) grant award (such coordination is critical because, for example, the Pilot Project sites will tie into BTOP-funded regional hubs, which in turn will connect with the BTOP-funded fiber backbone).

In short, while the issuance of ATN's first funding commitment letter started the clock ticking towards the Invoicing Deadline, network design has yet to be completed, and essentially the entire project remains to be bid out, constructed and invoiced, and all such steps must be addressed while carefully coordinating the Pilot Project with the implementation of the Arkansas BTOP award. At this time, based on the factors discussed above, ATN estimates that a three year extension of its Invoicing Deadline - until July 15, 2018 - will allow sufficient additional time within which to complete network buildout and invoicing.<sup>3</sup>

It is well established that the Commission may waive its rules - in whole or in part - "for good cause shown"<sup>4</sup> and if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>5</sup> Grant of the requested waiver to ATN would be in the public interest. As ATN has explained to the Bureau,<sup>6</sup> ATN has made significant progress in the implementation of its pilot project, even within the past year, including meeting all pre-conditions for its RFP, posting its initial RFP for network design services, commencing the network design RFP and selecting the network design vendor. In addition, the grant of the Arkansas BTOP award substantially expanded the ability of ATN to address critical broadband needs in health care, higher education, public safety, and research in unserved, underserved, and economically distressed areas in Arkansas. While such progress has occurred, a majority of the project must still be implemented through no fault of ATN. Without grant of the requested waiver, full utilization of the funds allocated for this Pilot Program might not be achieved, which

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<sup>3</sup> ATN notes that it believes a three year extension of its existing Invoicing Deadline will be sufficient to allow for completion of construction and invoicing, and that it would not be necessary for the Bureau to provide five years after each of ATN's subsequent funding commitment letters, as was requested by MPHI in the alternative. Having said that, ATN does not object to the grant of an additional five years beyond each funding commitment letter for MPHI, or to such grant for any other Pilot Program participant, should the Bureau deem that to be an appropriate measure of relief in this proceeding.

<sup>4</sup> See 47 C.F.R. § 1.3.

<sup>5</sup> See e.g., *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Also, with respect to wireless services, requests for waiver of the Commission's rules will be granted where either: "(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative." See 47 C.F.R. §1.925(b)(3)(i),(ii).

<sup>6</sup> See, e.g., letter from Suzanne Leslie to Sharon Gillett dated January 4, 2011, WC Docket No. 02-60 (requesting a further one year extension of the funding commitment deadline).

would prevent the Citizens of Arkansas – one of the nation’s poorest populations – from receiving the substantial telemedicine benefits promised under this program. Clearly, in this case, “special circumstances” exist justifying the grant to ATN of a three year extension of its Invoicing Deadline until July 15, 2018.

Furthermore, waiver in this case will not undermine the underlying purpose of the Pilot Program, which is to “stimulate deployment of the broadband infrastructure necessary to support innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute.”<sup>7</sup> To the contrary, waiver in this case will ensure that ATN is afforded sufficient opportunity to deploy a state-of-the-art telehealth network to the citizens of Arkansas, a state which (i) is substantial medically underserved; (ii) suffers from state-wide healthcare provider and mental health professional shortages; and (iii) is marked by widespread poverty.

In light of the public interest benefits to be gained by granting the requested waiver to ATN, and given the absence of countervailing public interest reasons to deny such waiver, ATN respectfully requests a three year extension of its Invoicing Deadline until July 15, 2018

Should any questions arise with respect to this request, please do not hesitate to contact the undersigned. Please note that Bruce Thomasson, the Assistant Project Coordinator, is signing this request, as Suzanne Leslie, Project Coordinator, is unavailable to sign due to logistical problems caused by weather issues in Arkansas at this time.

Sincerely,

SUZANNE LESLIE

by  


Suzanne Leslie, Project Coordinator

Bruce Thomasson, Assistant Project Coordinator

Arkansas Telehealth Network

University of Arkansas for Medical Sciences

cc: Ernesto Beckford, Attorney Advisor, FCC  
Jeffrey Rummel, Esquire, Arent Fox LLP

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<sup>7</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, FCC 07-198 (rel. Nov. 19, 2007).